

REMARKS

The present amendment is submitted, in response to the Final Office Action of 23 October 2003, in order to place the application *prima facie* in condition for allowance or in better form for appeal. Cancelled claims 1 - 10 are directed to the method and Applicant reserves the right to claim the method subject matter in a divisional application to be filed during the pendency of the present application. Claim 11 has been amended to define the temperature sensor in greater detail and now requires that the temperature sensor is provided with a member capable of being thrust into the vessel to pierce a body of meat therein and to indicate that that member has a plurality of sensing regions along a length of the member which provides an average temperature of the body of meat pierced thereby. Reference is made to FIGS. 3 and 4 in this connection. Claims 12 - 16 have been cancelled.

In addition to claim 11, claims 17 - 20 have been retained in the case. The apparatus recited in claims 17 - 20 includes programming means (18, 30), for raising a temperature of the bodies of the meat in the massaging drum to a predetermined elevated temperature while massaging the bodies of meat with a controlled torque of the rotary paddle.

All of claims 11 and 17 - 20 are believed to be patentable over WO 96/36233 in view of HORN et al and BURKHART and, further in view of DE 3119496A and LUDWIG Patent 5,405,630.

Dealing first with the temperature sensor and the member which, in combination with a jacket for selective heating and cooling and for agitating the bodies of meat in a treating liquid, Applicant notes that the Examiner has relied upon DE 3119496A as teaching an apparatus which comprises a temperature probe which is thrust into a meat product.

That reference is a food thermometer which is intended for use in a microwave oven. It comprises a probe which is manually thrust into a body of meat. At page 4 of the German text, in free translation, the description states: "In FIG. 1 a piece of meat has been indicated at 1 which is to be cooked for example in a microwave oven or is to be thawed in the case of a deep frozen piece of meat. For temperature control or control of the microwave power a food thermometer is provided as indicated at two which, as is especially shown in FIG. 2, comprises a handle 3 and a spike-like sensor part 4 extending from this handle.

Neither WO 96/36233, nor BURKHART nor HORN et al is in any way a microwave oven or, for that matter, an apparatus for the controlled treatment of bodies of meat in a liquid which could accommodate a probe of the type shown in DE 3119496A. Furthermore, that probe does not have the separate regions required for claim 11 for averaging purposes.

Thus there is no basis for combining DE 3119496A with the other art applied by the Examiner and, indeed, the combination of a manually insertable probe with the machines for WO 96/36233 or BURKHART nor HORN et al would certainly not be obvious to an

ordinary skilled individual in this art. Furthermore, at the very least there must be a suggestion of the combination in the references themselves (Ashland Oil Inc. v. Delta Resin & Refractories, Inc. 227 USPQ 657). The Examiner cannot rely upon hindsight from Applicant's disclosure to collect the art as he has done here and then combine the references. Claim 11 and, of course, claims 19 and 20 which contain related subject matter are thus deemed to be allowable.

Claims 17 - 20 are allowable as well. It is true that the LUDWIG reference 5,405,630 does have a microprocessor controller for controlling the torque of a paddle massager. The present invention, as a review of the specification will show, adds in this field, the concept of, in response to the programming, "raising a temperature of said bodies of meat in said massaging drum to a predetermined elevated temperature while massaging said bodies with a controlled torque of the rotary paddle."

Notwithstanding the Examiner's analysis of WO 96/36233 and BURKHART, neither has a programmer which raises the temperature during the treatment process and certainly that is not disclosed in LUDWIG from which one learns of cooling. Since a programming means as recited in claim 17 would not have been obvious from the art applied by the Examiner against claim 17, claim 17 and claims 18 - 20 which depend therefrom are allowable.

Claims 11 and 17 - 20 are thus deemed to be allowable and
an early notice to that effect is earnestly solicited.

Respectfully submitted,
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